

Message Text

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E.O. 11652: N/A

TAGS: SNAR

SUBJECT: U.S. COAST GUARD EFFORTS TO SUPPRESS DRUG TRAF-
FICKING

"FOLLOWING IS A REPEAT
QUOTE
R 210935Z MAY 78
FM SECSTATE WASHDC

TO: BOGOTA, CURACAO, GUATEMALA, KINGSTON, LONDON, NASSAU,
PANAMA, PORT AU PRINCE, PORT OF SPAIN, SANTO DOMINGO, BELIZE,
BARRANQUILLA, HAVANA, MANAGUA, SAN JOSE, THE HAGUE, GEORGE-
TOWN, COMLATAREA COGARD NY, COAST GUARD WASHDC 0000,
CCGDSEVEN MIAMI, CCGDEIGHT NEW ORLEANS LA

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SUBJECT: U.S. COAST GUARD EFFORTS TO SUPPRESS DRUG TRAF-
FICKING

1. AS A PART OF THE PRESIDENTIALLY-DIRECTED CAMPAIGN
AGAINST DRUG ABUSE, THE COAST GUARD HAS, FOR SEVERAL YEARS,
BEEN MAKING A CONCENTRATED, AND INCREASINGLY SUCCESSFUL,

EFFORT TO INTERDICT VESSELS ENGAGED IN INTERNATIONAL DRUG TRAFFIC BOUND FOR THE UNITED STATES. A LARGE PROPORTION OF THE VESSELS INTERDICTED ARE UNITED STATES VESSELS AND THUS THEIR SEIZURE DOES NOT INVOLVE ANY SIGNIFICANT PROBLEMS FOR EMBASSIES ABROAD. HOWEVER, THERE IS ALSO A LARGE CONTINGENT OF FOREIGN VESSELS ENGAGED IN THE ILLICIT TRAFFIC, AND INTERDICTION AND SEIZURE OF THESE VESSELS BY THE U.S. COAST GUARD DOES GIVE RISE TO ISSUES OF FACT AND POLICY WHICH COME UNDER THE COGNIZANCE OF THE DEPARTMENT. UNDER SOME CIRCUMSTANCES, USG LAW ENFORCEMENT ACTIONS WITH RESPECT TO FOREIGN VESSELS REQUIRE COORDINATION WITH OR AUTHORIZATION FROM THE VESSEL'S FLAG STATE. UP TO NOW, OUR APPROACHES TO THE AFFECTED GOVERNMENTS HAVE BEEN ON AN AD HOC BASIS. BECAUSE OF THE DELAYS AND DIFFICULTIES ENCOUNTERED IN PAST CASES (NOT TO MENTION PROBLEMS FOR OUR EMBASSY, LIKE GETTING HOLD OF SOMEONE IN THE MIDDLE OF THE NIGHT), THE DEPARTMENT HAS DECIDED TO ATTEMPT TO REGULARIZE.

PROCEDURES THROUGH A SERIES OF AGREEMENTS OR UNDERSTANDINGS WITH THOSE COUNTRIES WHOSE FLAG IS MOST OFTEN FOUND FLYING ON TRAFFICKING VESSELS. THE PURPOSE OF THIS CABLE IS TO BRIEF YOU ON THE RELEVANT ISSUES AND TO POINT OUT STEPS THAT YOU SHOULD TAKE IN ORDER TO (1)
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FACILITATE THE DISCUSSIONS LEADING TO AN UNDERSTANDING ON THIS MATTER WITH YOUR HOST GOVERNMENT; AND (2) EXPEDITE AD HOC ARRANGEMENTS SHOULD A CASE ARISE BEFORE AN AGREEMENT IS IN PLACE.

2. ONCE DEPARTMENT AND OTHER INTERESTED AGENCIES HAVE RECEIVED AND STUDIED MATERIAL REQUESTED BELOW, A TEAM OF LEGAL AND OTHER REPRESENTATIVES OF STATE AND APPROPRIATE AGENCIES WILL TRAVEL TO SELECTED ADDRESSEES TO OPEN TALKS WITH HOST GOVERNMENTS. APPROACHES CONCERNING SPECIFIC FOREIGN VESSELS WILL CONTINUE ON AN AD HOC BASIS UNTIL STANDING PROCEDURES ARE ESTABLISHED.

3. MOST OF THE CONTRABAND INTERDICTED BY THE COAST GUARD'S PATROLS CONSISTS OF MARIJUANA SHIPPED FROM COLOMBIA; INTELLIGENCE SOURCES IN COLOMBIA AND ELSEWHERE ACKNOWLEDGE THAT COCAINE IS BEING SHIPPED BY THE SAME ROUTE. AS A GLANCE AT A MAP OF THE AREA BETWEEN FLORIDA AND SOUTH AMERICA WILL SHOW, THE MOST DIRECT ROUTES FOR THE TRAFFICKERS INCLUDE PASSAGE THROUGH ONE OF THREE STRAITS: THE YUCATAN STRAIT WEST OF CUBA, THE WINDWARD PASSAGE EAST OF CUBA; OR THE MONA PASSAGE WEST OF PUERTO RICO. THE

COAST GUARD HAS FOUND IT MOST ADVANTAGEOUS TO CONCENTRATE THEIR PATROLS ON THESE CHOKE POINTS, WITH A VIEW TOWARD BOARDING SUSPECT VESSELS AS THEY HEAD NORTH. THE OBVIOUS

DRAWBACK OF THIS TACTIC IS THAT IN PASSING THROUGH THESE STRAITS AND WHILE OTHERWISE PLYING THEIR TRADE, THE FOREIGN MOTHERSHIPS USUALLY REMAIN ON THE HIGH SEAS WHERE THEY, EXCEPT UNDER THE CIRCUMSTANCES OUTLINED IN PARAGRAPH 6 BELOW, ARE NOT SUBJECT TO THE LAW ENFORCEMENT JURISDICTION OF THE US WITHOUT SPECIFIC AUTHORIZATION FROM THEIR FLAG STATE.

4. CASES IN WHICH THE COAST GUARD HAS ENCOUNTERED SUSPECT FOREIGN VESSELS ON THE HIGH SEAS UNDER CONDITIONS WHICH LIMITED OFFICIAL USE
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DO NOT SUBJECT THE VESSEL TO THE LAW ENFORCEMENT JURISDICTION OF THE UNITED STATES HAVE BEEN TREATED ON AN AD HOC BASIS AS FOLLOWS. THE DEPARTMENT HAS SOUGHT TO VERIFY THE VESSEL'S CLAIMED NATIONALITY WITH THE PURPORTED FLAG STATE. IF THE NATIONALITY IS CONFIRMED, WE SEEK PERMISSION FROM THE FLAG STATE TO BOARD AND TAKE LAW ENFORCEMENT ACTION ABOARD THE VESSEL. IF EVIDENCE SUPPORTS A VIOLATION OF US LAWS, THE INITIATIVE INCLUDES A REQUEST FOR AUTHORIZATION FROM THE DEPARTMENT OF JUSTICE TO SEIZE THE VESSEL FOR PROSECUTION OR FORFEITURE IN THE US WHEN IT IS DETERMINED THAT THERE IS EVIDENCE OF A PROSECUTABLE VIOLATION OF US LAWS, IT IS JUSTICE DEPARTMENT'S POLICY TO PROSECUTE WHERE APPROPRIATE. REQUEST IS FOR AUTHORIZATION TO DETAIN THE VESSEL ON BEHALF OF THE FLAG STATE. THIS LATTER COURSE, THOUGH SUCCESSFUL IN SEVERAL CASES, HAS BEEN THE SOURCE OF SOME DIFFICULTY. UNLESS THE SEIZURE TAKES PLACE NEAR THE FLAG STATE, IT IS NOT POSSIBLE FOR THE COAST GUARD TO DELIVER THE SEIZED VESSEL TO THAT COUNTRY; DETENTION IN THE US IS THE ONLY VIABLE ALTERNATIVE. UNDER CURRENT US LAW AND PROCEDURES, ONCE THE VESSEL IS BROUGHT INTO THE US, THE ONLY WAY ITS CREW CAN BE TURNED OVER TO THE FLAG STATE IS THROUGH THE FORMAL EXTRADITION PROCESS. SINCE THE FLAG STATE HAS NO KNOWLEDGE OF THE ILLEGAL ACTIVITY ABOARD THE VESSEL EXCEPT FOR THE INFORMATION FORWARDED TO IT BY THE US, IT OFTEN FINDS IT DIFFICULT, IF NOT IMPOSSIBLE, TO SATISFY THE EVIDENTIARY AND DOCUMENTARY REQUIREMENTS FOR PROVISIONAL DETENTION AND EXTRADITION IN A TIMELY MANNER. WITHOUT THE NECESSARY EVIDENCE AND FLAG STATE DOCUMENTATION, THE US IS UNABLE TO HOLD THE CREW OF THE VESSEL BEYOND THE TIME NECESSARY TO PROCESS THEM FOR DEPORTATION. THEREFORE, WE ARE FACED WITH A CATCH-22 SITUATION: WE HAVE SEIZED A VESSEL ON THE HIGH SEAS ON LIMITED OFFICIAL USE
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BEHALF OF THE FLAG STATE WHICH AT OUR BEHEST AUTHORIZED US

TO DO SO. THEN BECAUSE OF THE INFLEXIBILITY OF THE EXTRA-

DITION PROCESS, WE ARE UNABLE TO HOLD THE VESSEL'S CREW FOR THE FLAG STATE BECAUSE IT IS UNABLE TO DOCUMENT FOR US THE REASONS WE ASKED IT TO AUTHORIZE US TO SEIZE THE VESSEL IN THE FIRST PLACE.

5. BECAUSE OF THE GENERAL DISSATISFACTION WITH EXTRA-DITION APPROACH, WE HAVE, IN RECENT CASES, CHOSEN TO FOREGO ANY THOUGHT OF HOLDING THE CREW OF THE VESSEL FOR EXTRA-DITION. RATHER WE HAVE ADDRESSED THE VESSEL ONLY, HOLDING IT FOR FINAL DISPOSITION BY THE FLAG STATE (IN CASES WHERE FOR FORFEITURE OR OTHER DISPOSITION UNDER US LAW IS NOT POSSIBLE). THE CREW IS NOW ROUTINELY TURNED OVER TO INS FOR DEPORTATION PROCEEDINGS. THUS IN OUR INITIAL APPROACH TO THE FLAG STATE, WE SHOULD POINT OUT THAT UNLESS IT HAPPENS TO BE THE STATE TO WHICH CREW MEMBERS ARE DEPORTED, IT WILL NOT GET A CHANCE TO PROSECUTE THEM. IT IS OUR UNDERSTANDING THAT MOST IF NOT ALL FLAG STATES INVOLVED HAVE NO REAL INTEREST IN THE CREW, AND THAT THEIR PRIMARY CONCERN AND DESIRE IS TO OBTAIN THE VESSEL. IN THIS REGARD WE NOTE THAT MANY OF THE VESSELS INVOLVED ARE OF MARGINAL VALUE AND PROBABLY ARE NOT WORTH THE FLAG STATE'S TIME AND EFFORT TO RECOVER. ONLY IF DISPOSITION UNDER US LAW IS NOT POSSIBLE, WE PROPOSE TO LEAVE A DECISION ON THIS UP TO THE FLAG STATE IN EACH INSTANCE. IF IT CHOOSES TO RECOVER THE VESSEL, IT WILL BE EXPECTED TO EXPEDITIOUSLY REMOVE IT FROM US CUSTODY (USUALLY WITHIN 30 DAYS) AND DISPOSE OF IT EITHER BY SALE WITHIN THE US OR REMOVAL TO THE FLAG STATE. ALL COSTS INCURRED BY THE FLAG STATE IN RECOVERING AND DISPOSING OF THE VESSEL MUST BE BORNE BY THE FLAG STATE. MOREOVER, IF THE VESSEL IS RECOVERED BY THE FLAG STATE, USG EXPECTS TO BE REIMBURSED FROM THE PROCEEDS, IF ANY, FOR ITS EXPENSES IN MAINTAINING CUSTODY OF THE VESSEL PENDING ITS RELEASE
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TO THE FLAG STATE. IF THE VESSEL IS NOT RECOVERED BY THE FLAG STATE WITHIN THE 30-DAY PERIOD, USG WOULD AUCTION IT OFF (AS IT DOES IN THE SEIZURE OF DOMESTIC VESSELS), AND, AFTER DEDUCTING THE COSTS RELATED TO STORAGE AND SALE, TURN THE PROCEEDS OVER TO THE GOVERNMENT OF THE FLAG STATE. N. B. DUE TO UNCERTAINTY ON LEGAL ASPECTS OF THE FOREGOING POSTS SHOULD NOT AT THIS STAGE PROMISE RETURN OF THE VESSEL TO FLAG STATE.

6. UNDER CERTAIN CIRCUMSTANCES, THE CURRENT INTERNATIONAL LAW OF THE SEA AUTHORIZES THE US TO EXERCISE LAW ENFORCEMENT JURISDICTION OVER A FOREIGN VESSEL ON THE HIGH SEAS WITHOUT SPECIFIC AUTHORIZATION FROM ITS FLAG STATE. THESE CIRCUMSTANCES INCLUDING BUT NOT LIMITED TO APPLICATION OF

THE DOCTRINES OF HOT PURSUIT, CONSTRUCTIVE PRESENCE AND
ASSIMILATED STATELESSNESS.

A. HOT PURSUIT IS THE UNIVERSALLY-ACCEPTED AND FRE-
QUENTLY-PRACTICED DOCTRINE WHICH ALLOWS A COASTAL STATE, BY
PURSUING AND MAINTAINING CONTACT WITH A FLEEING VESSEL, TO
PRESERVE ITS RIGHT TO EXERCISE LAW ENFORCEMENT JURISDICTION
OVER A FOREIGN VESSEL EVEN AFTER IT FLEES BEYOND THE GEO-
GRAPHICAL AREA (THE 12-MILE CONTIGUOUS ZONE) IN WHICH IT
WOULD NORMALLY BE SUBJECT TO THE JURISDICTION OF THE UNITED
STATES FOR THE PURPOSE OF ENFORCING US CUSTOMS LAWS.

B. CONSTRUCTIVE PRESENCE IS A CORRELATIVE DOCTRINE
WHICH MAKES A FOREIGN VESSEL SUSCEPTIBLE TO HOT PURSUIT
(AND THUS TO COASTAL STATE JURISDICTION) EVEN THOUGH IT IS
ONE OF ITS BOATS (OR ANOTHER CRAFT WORKING AS A TEAM WITH
THE FOREIGN VESSEL AND USING IT AS A MOTHERSHIP) -- NOT THE
FOREIGN VESSEL ITSELF -- WHICH VIOLATES THE COASTAL STATE'S
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LAW.

C. ASSIMILATED STATELESSNESS IS THE PUNITIVE STATUS
WHICH MAY BE IMPOSED UPON A VESSEL WHICH WRONGFULLY CLAIMS
THE PROTECTION OF MORE THAN ONE COUNTRY IN AN EFFORT TO
AVOID THE RESPONSIBILITIES INCUMBENT UPON A VESSEL EXER-
CISING THE RIGHT OF NAVIGATING ON THE HIGH SEAS.

7. ACTION REQUESTED:

A. POSTS SHOULD OBTAIN COPIES OF HOST LAWS WHICH
DEFINE THE VIOLATIONS OF THAT COUNTRY FOR MARIJUANA AND
OTHER DRUGS, SPECIFICALLY INCLUDING POSSESSION WITH INTENT
TO DISTRIBUTE, DISTRIBUTION, IMPORTATION, EXPORTATION, AND
THE POSSESSION OF THOSE DRUGS ON A VESSEL REGISTERED TO
THE HOST COUNTRY, AND CONSPIRACY AND ATTEMPT TO COMMIT
THOSE VIOLATIONS. ADDITIONALLY, COPIES SHOULD BE OBTAINED
OF ANY LAWS PERTAINING TO THE AUTHORITY OF THAT COUNTRY
TO BOARD, SEARCH, SEIZE, AND FORFEIT VESSELS REGISTERED TO
THAT COUNTRY. IF AT ALL POSSIBLE, ENGLISH TRANSLATION
OF PERTINENT SECTIONS SHOULD BE MADE. IF NOT, ENGLISH
SUMMARY SHOULD BE PROVIDED. IN ADDITION POST SHOULD OBTAIN
SAMPLES OF VESSEL DOCUMENTATION AND CREW IDENTIFICATION
PAPERS. ALL OF THE FOREGOING MATERIAL SHOULD BE FORWARDED
TO DEPT (L/OES).

B. POSTS SHOULD ESTABLISH LIAISON WITH APPROPRIATE
CONTACTS WITHIN HOST GOVERNMENTS AND, USING CONTENT OF THIS
CABLE, EXPLAIN PURPOSE AND EXTENT OF COAST GUARD'S MARI-
TIME DRUG INTERDICTION PROGRAM WITH A VIEW TOWARD FACILI-

TATING ACQUISITION OF REQUIRED INFORMATION (I.E., VERI-

FICATION OF CLAIMED REGISTRY) AND AUTHORIZATION (I.E.,
PERMISSION TO BOARD AND TAKE LAW ENFORCEMENT ACTION) SHOULD
A CASE INVOLVING HOST GOVERNMENT'S VESSELS ARISE PRIOR TO
CONTEMPLATED TALKS ON THIS MATTER.

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8. FOR LONDON: IN CASE OF THE US, OUR INTEREST IS IN
BELIZ: AND CAYMAN ISLANDS PARTICULARLY, AS WELL AS OTHER
CARIBBEAN POSSESSIONS.

9. FOR HAVANA: IN VIEW OF EARLIER TALKS WITH COAST
GUARD, WE ARE INCLUDING YOU ON THIS MESSAGE. DEPARTMENT
RECOGNIZES THAT IT MAY NOT BE OPPORTUNE TO RAISE THIS ISSUE
NOW, NOR IS IT LIKELY THE CUBAN GOVERNMENT WOULD AGREE TO
USCG BOARDING ITS VESSELS. HOWEVER, WE WOULD APPRECIATE
ANY COMMENTS YOU MAY WISH TO MAKE ON THIS PROBLEM.

VANCE. UNQUOTE. VANCE

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